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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SANTA CLARITA VALLEY WATER
AGENCY,

Plaintiff,

vs.

WHITTAKER CORPORATION and
DOES 1-10, Inclusive,

Defendant.

Case No: 2:18-cv-6825 SB (RAOx)

*Assigned to Hon. Stanley Blumenfeld,
Jr.*

**PLAINTIFF'S MOTION IN
LIMINE NO. 4 TO EXCLUDE
TESTIMONY OF G. HOKKANEN**

Date Action Filed: August 8, 2018

Trial Date: August 24, 2021

AND RELATED CASES

I. INTRODUCTION

Whittaker Experts Gary Hokkanen's opinion⁴ relies on three monitoring wells (out of 300) to support his opinions that VOC contamination has not left the Whittaker site. However, the three monitoring wells that form the "Hokkanen Maginot wall"¹ cover only a small percentage of the Whittaker's western border. While he acknowledges that contamination was spread throughout the 998-acre site, he failed to account for alternative pathways from the site multiple contaminated areas, including pathways around the Hokkanen Maginot wall identified by Whittaker's consultant over the past 10 years. In addition, Mr. Hokkanen claims that TCE will travel at 40-50% the rate of perchlorate, but fails to apply the TCE travel distance to the perchlorate travel distance in his opinion – a comparison that clearly contradicts his conclusion.

Mr. Hokkanen also opines that the VOC contamination cannot reach Wells V-201 and V-205 because the production well zone of influence does not reach the Whittaker site. The Zone of Influence is the area of groundwater which is affected by the pumping of a well. The faster the pumping rate the larger the area. *See* University of Michigan "Wellhead Protection Program" glossary at <https://ehs.msu.edu/enviro/whpp/index.html>. It is undisputed that perchlorate contamination from the Whittaker site have reached these wells and since VOCs and perchlorate travel along the same flow paths, the well's zone of influence also draws VOCs to these wells. Mr. Hokkanen also fails to consider the well zone of influence during the 13 years when up gradient wells were not operating.

Finally, Mr. Hokkanen claims that the Flamingo Cleaners is the source of VOCs in SCV Water's distribution system. However, during his deposition, he

¹ While as discussed below, groundwater clearly flows around the Hokkanen Maginot wall, it also flows through and perhaps beneath the wall. As shown in Exhibit 1, there have been detections of VOCs in the subject monitoring wells and two of the monitoring wells that Mr. Hokkanen rely do not extend to the deeper Hydrostatic units ("HSUs").

acknowledged that SCV Water's distribution system operates at a high pressure and was unaware of any process at a dry cleaner that has sufficient pressure to contaminate SCV Water's distribution system. For the reasons stated below, the following opinions are unreliable and

- Opinion 4: "Although perchlorate has impacted Water Agency groundwater production wells downgradient of the Bermite Site, based on the differences in migration rates and supported by the water quality data, VOCs from the Bermite Site have not migrated to the Water Agency's groundwater production wells and the Bermite Site is not a source of the VOC detection in the wells at issue."
- Opinion 5: "VOCs from the Bermite Site have not impacted the Water Agency's groundwater production wells V-201 and V-205."
- Opinion 9: Based on the available data, other previously identified sources could be contributing VOCs in the Water Agency's Distribution system

II. STANDARDS FOR EXCLUSION OF EXPERT TESTIMONY

As set forth in the FRE 702 Advisory notes, the 2000 Amendment "affirms the trial court's role as gatekeeper and provides some general standards that the trial court must use to assess the reliability and helpfulness of proffered expert testimony. Among the factors that, the courts consider are:

- "Whether the expert has adequately accounted for obvious alternative explanations. *See Claar v. Burlington N.R.R.*, 29 F.3d 499 (9th Cir. 1994) (testimony excluded where the expert failed to consider other obvious causes for the plaintiff's condition), and
- "Whether the expert "is being as careful as he would be in his regular professional work outside his paid litigation consulting." *Sheehan v. Daily Racing Form, Inc.*, 104 F.3d 940, 942 (7th Cir. 1997). *See Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167, 1176 (1999) (*Daubert* requires

1 the trial court to assure itself that the expert “employs in the courtroom
2 the same level of intellectual rigor that characterizes the practice of an
3 expert in the relevant field”).”

4 *See FRE 702 Committee Notes on Rule – 2000 Amendment.*

5 **III. MR. HOKKANEN FAILED TO CONDUCT A “CAREFUL**
6 **ANALYSIS” BY IGNORING “OBVIOUS ALTERNATIVE**
7 **EXPLANATIONS”**

8 **A. Hokkanen Claims TCE travels at 40-50% the speed of**
9 **Perchlorate but Failed to Calculate the TCE Travel Distance**

10 Both Mr. Hokkanen and SCV Water experts agree that:

- 11 • Perchlorate and VOCs were generally released from the same source
12 areas at the Whittaker site.
- 13 • VOCs and Perchlorate from the Whittaker site follow the same migration
14 pathway
- 15 • VOC in groundwater migrate at a slower rate than perchlorate.

16 Mr. Hokkanen further to explains that “The overall distance the perchlorate
17 plume has migrated is approximately 2 to 2 ½ times the distance the TCE plume
18 has migrate.” See Gee Decl. ISO Mtns. Ex. EE at 51 (Hokkanen Report, Opinion
19 3). Mr. Hokkanen did not, however, calculate the distance traveled by TCE from
20 the Whittaker site based on the distance traveled by perchlorate from the Whittaker
21 site, a relatively simple calculation that an environmental consultant could easily
22 perform to determine the extent of the TCE plume. Instead, Mr. Hokkanen
23 includes a textbook schematic in section 4.6 to illustrate travel distance.

24 Both Whittaker and SCV Water consultants have been using monitoring data
25 to determine the distance that perchlorate contamination has spread from the
26 Whittaker site. Mr. Hokkanen even includes a depiction of the perchlorate plume
27 in Figure 42 of his report that indicates that perchlorate traveled fourteen thousands
28

1 Whittaker site must go through the Hokkanen Maginot wall. As clearly shown in
2 Figure 42 above, perchlorate contamination spread from the multiple
3 contamination areas from the Whittaker site and created a contamination plume
4 that extends at least 14,000 feet to the west of the site. There is clearly
5 contamination to the North and South of the Hokkanen Maginot wall. Mr.
6 Hokkanen admits that VOCs and Perchlorate are found in the same source areas
7 and travel in the same pathways. Hr. Hokkanen does not explain or even consider
8 the alternative pathways.

9 Mr. Hokkanen only needed to look at Whittaker's own consultant (AECOM)
10 groundwater monitoring reports that show that contamination flows to the north
11 and south of the Hokkanen Maginot wall. Gee Decl. ISO Mtns. Ex. AA
12 (Hokkanen Depo. Ex. 316 and Ex. 318). When asked about AECOM's Exhibit
13 316 groundwater flow diagrams, Mr. Hokkanen agreed that the AECOM flow
14 diagram contradicted his opinion that groundwater must flow through the
15 Hokkanen Maginot wall, but dismissed AECOM's depiction as a "snapshot in
16 time."

17 Q: Does the arrows in HSU-3c appear to be moving in the west
18 southwest . . . direction from the Whittaker-Bermite site [to the south of the
19 Hokkanen Maginot wall]?

20 A: In May of 2019, based on these water levels, that's what it indicates,
21 yes"

22 Q: How did you determine whether the groundwater flows toward those .
23 . . monitoring wells?

24 A: I want to preface my answer this way, that you're showing me in this
25 exhibit is one snapshot in time and . . . as a hydrogeologist, I wouldn't base
26 my analysis on one snapshot in time. Your right . . . what this snapshot in
27 time seems to indicate a southwestern flow direction in [HSU]-3c from
28 OU-4 area of the Bermite site."

1 Gee Decl. ISO Mtns. Ex. J at 119:124:9 (Hokkanen Depo. Excerpts).

2 However, in reviewing AECOM's groundwater monitoring report over the
3 past 10 years, the groundwater flow in HSU-3c has consistently moved in the west
4 southwest direction to the south of the Hokkanen Maginot wall. *See* Gee Decl.
5 ISO Mtns. Ex. Z (AECOM Flow Diagrams). Similarly, groundwater flow diagrams
6 for the HSU 3a flowed to the north of the Hokkanen Maginot wall for the past 9
7 years. Gee Decl. ISO Mtns. Ex AA (Hokkanen Depo. Ex. 318); Ex Z (AECOM
8 Flow Diagrams). A clear depiction of groundwater flow around the west border of
9 the Hokkanen Maginot wall is shown in Gee Decl. ISO Mtns. Ex. F at 31 (Stanin
10 Rebuttal Report).

11 In summary, Mr. Hokkanen used three monitoring wells on the west side of
12 the Whittaker site to create an illusion that VOCs cannot migrate off of the
13 Whittaker site, but failed to evaluate the obvious alternatives – that is, there are
14 numerous pathways around the Hokkanen Maginot wall. The existence of
15 alternative pathways depicted by Whittaker's own consultants is consistent with
16 the 14,000 foot perchlorate plumes and the corresponding 5,600 foot TCE plume
17 that have impacted SCV Water's Saugus wells.

18 **C. Hokkanen's conclusion that the zone of influence for V-201 and**
19 **V-205 does not reach the Whittaker site is also contrary to**
AECOM's analysis.

20 Mr. Hokkanen argues that VOC's cannot reach SCV Water wells because
21 the zone of influent does not reach the Whittaker Bermite site. To support his
22 conclusion, he uses an outdated 2004 particle tracking diagram developed by
23 CH2MHill prepared for the Army Corp of Engineers to demonstrate that the
24 operation of the two closest wells to the Whittaker site (Saugus 1 and 2) to contain
25 the perchlorate plume from the Whittaker Bermite site from contaminating V-201
26 and V-205. Since 2004, much more data has been collected both from the
27 Whittaker Bermite site and in the groundwater west of the Whittaker site that both
28 Whittaker and SCV Water consultants have used to refine the particle tracking

1 model. The most recent particle tracking model presented by AECOM to SCV
2 Water and its consultants on February 26, 2019 clearly show that the capture zone
3 for V-201 and B-205 clearly reach and extend through the Whittaker site. Gee
4 Decl. ISO Mtns. Ex X at 60 (Powerpoint Presentation).

5 Even if the 2004 particle tracking model was still valid (which it is not), Mr.
6 Hokkanen failed to consider that the Saugus 1 and 2 wells were shut down from
7 1997 to 2010/2011 due to perchlorate contamination from the Whittaker site. The
8 model, which was used to determine if Saugus 1 and 2 could be operated to
9 prevent contamination from reaching V-201 and V-205 is not valid during the time
10 period that Saugus 1 and 2 were operating. Gee Decl. ISO Mtns. Ex. F at 13
11 (Stanin Rebuttal Report).

12 **D. Mr. Hokkanen Cannot Explain how VOCs from a low pressure**
13 **dry cleaner can contaminate SCV Water's high-pressure**
14 **distribution system**

15 Mr. Hokkanen identifies Flamingo Cleaners as the one possible source of
16 contamination to SCV Water's high-pressure distribution system. However, it is
17 clear that he did not evaluate and could not explain how a dry cleaner that uses
18 PCE to spray onto clothes at low pressure can overcome the distribution system
19 pressure.

20 Q Are you aware that the pressure within a water distribution system is
21 approximately 150 to 175 pounds per square inch?

22 A . . . I have a civil engineering degree, and I studied water and
23 wastewater and distribution systems and this sort of thing. So, yes, I do
24 know that these pipes are pressurized.

25 Q Okay. And the sites that you . . . referenced that may be contributing
26 to the PCE contamination such as dry-cleaners, do they have any facilities --
27 or any tanks or pipes or anything at a dry cleaner that can produce 150 to
28 175 pounds per [square inch] pressure?

A: I don't believe so, no.

1 Q: So did you do a fate and transport analysis to determine whether a dry
2 cleaner can put TCE [PCE] contamination [into a] 150 to 175 pound
3 distribution system?

4 A: Did I do an analysis like that, no.

5 Q: And how did you conclude that these other potential sources of PCE
6 could contaminate the distribution system?

7 A: I believe Mr. Leserman testified that he felt that one of the dry
8 cleaners, Flamingo Cleaners, could have been the source of the high PCE
9 detections in one of the turnouts. . .

10 Q: Okay. And did you read Mr. Leserman's report?

11 A: I think I did, yes, once. It wasn't a very long report if I remember
12 right. . .

13 Q: Okay. And how else can PCE get into a pressurized distribution
14 system?

15 A: I'm not sure.

16 In other words, Mr. Hokkanen's opinion is based on a single reading of an
17 investigation report and he did not give any thought as to whether low pressure
18 PCE from a dry cleaner can contaminate a pipeline operating at a much higher
19 pressure. Clearly, Mr. Hokkanen was not being as careful in rendering this opinion
20 as he would be a hydrogeologist that analyzes the fate and transport of
21 contamination and his opinion should be excluded. *See Kumho Tire Co. v.*
22 *Carmichael*, 119 S.Ct. 1167, 1176 (1999) (*Daubert* requires the trial court to
23 assure itself that the expert "employs in the courtroom the same level of
24 intellectual rigor that characterizes the practice of an expert in the relevant field").

25 **IV. CONCLUSION**

26 Mr. Hokkanen failed to consider obvious alternative theories and was not as
27 careful as a professional conducting his work outside of his paid litigation
28 consulting. His Opinions 4, 5, and 9 are unreliable and misleading and should be

1 excluded from trial.

2
3 Date: July 13, 2021

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WHITTAKER'S OPPOSITION TO SCVWA'S MIL # 4: G. HOKKANEN

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1 **I. INTRODUCTION**

2 The fact that Santa Clarita Valley Water Association (SCVWA) disagrees
3 with the opinions of Whittaker's expert Mr. Gary Hokkanen is not a basis for the
4 Court to exclude them under *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579
5 (1993) and Federal Rule of Evidence 702. The reasoning and methodology applied
6 by Mr. Hokkanen is based on accepted scientific principles, field data, and a
7 published methodology that has been peer reviewed in publications and accepted in
8 the field of Hydrology. This Court said as much in its April 5, 2021 Order
9 Regarding Parties Motions and Cross Motions for Partial Summary Judgement
10 Dkt. 272 (pp. 4-6). The opinions of Mr. Hokkanen will assist the Court and the
11 jury in determining the central issues in this case.

12 **II. THE STANDARD FOR ADMITTING EXPERT TESTIMONY**

13 SCVWA incorrectly seeks to exclude the opinions of Whittaker's expert Mr.
14 Gary Hokkanen under *Daubert* and Federal Rule of Evidence 702 by claiming
15 these opinions are based upon a flawed methodology, are not the product of
16 reliable scientific principles and accepted methods in the field of Hydrology. This
17 argument crumbles when the basis for each of the opinions challenged by SCVWA
18 are examined.

19 The fact that SCVWA disagrees with the opinions of Mr. Hokkanen is not a
20 proper basis for the Court to exclude them under *Daubert*. *Kennedy v. Collagen*
21 *Corp.*, 161 F.3d 1226, 1230 (9th Cir. 1998), *cert. den.* 526 U.S. 1099 (stating that a
22 court "should not exclude expert testimony simply because it disagrees with the
23 conclusions of an expert" and "[t]he [*Daubert*] test is whether or not the reasoning
24 is scientific and will assist [the trier of fact].")

25 Even assuming for the sake of argument that some of these expert opinions
26 put forth by Mr. Hokkanen are flawed in methodology (and Whittaker in no way
27 concedes this point), "[d]isputes as to the strength of [an expert's] credentials,
28 faults in his use of [a particular] methodology, or lack of textual authority for his

1 opinion, go to the weight, not the admissibility, of his testimony.” *Id.* (quoting
2 *McCulloch v. H.B. Fuller Co.*, 61 F.3d 1038, 1044 (2d Cir.1995)).

3 In determining whether an expert’s testimony is reliable and based upon the
4 scientific method, the Ninth Circuit, in *Edwin Hardeman v Monsanto Company*,
5 997 F.3d 941, 960 (9th Cir. May 14, 2021) held:

6 [w]hen determining reliability, district court judges can consider the
7 following non-exclusive factors: (1) “whether the theory or technique
8 employed by the expert is generally accepted in the scientific
9 community;” (2) “whether it’s been subjected to peer review and
10 publication;” (3) “whether it can be and has been tested;” and (4)
“whether the known or potential rate of error is acceptable.”

11 *Daubert v. Merrell Dow Pharms., Inc.*, 43 F.3d 1311, 1316 (9th Cir. 1995)
12 (citing *Daubert*, 509 U.S. at 593– 95).

13 “Th[is] inquiry is ‘flexible,’” *Wendell*, 858 F.3d at 1232 (quoting *Daubert*,
14 509 U.S. at 594), and “should be applied with a ‘liberal thrust favoring admission,’”
15 *Messick v. Novartis Pharms. Corp.*, 747 F.3d 1193, 1196 (9th Cir. 2014) (quoting
16 *Daubert*, 509 U.S. at 588, 113 S.Ct.2786).” “Scientific evidence is reliable when
17 “the principles and methodology used by an expert are grounded in the methods of
18 science.” *Clausen v. M/V New Carissa*, 339 F.3d 1049, 1056 (9th Cir. 2003).”
19 *Hardeman, supra*, 997 F.3d 941at 960.

20 The work done in support of the testimony given by Mr. Hokkanen in this
21 case meets all of these factors, cited both in the 2000 Advisory Notes to Federal
22 Rule of Evidence 702 and by the Ninth Circuit in its *Hardeman*. Furthermore, the
23 principals and methods relied upon by Mr. Hokkanen are well grounded in science
24 and widely accepted and applied by experts in the field. That SCVWA may
25 disagree with the methodology used by or the conclusions reached by Mr.
26 Hokkanen is not a basis to exclude the opinions offered. *Kennedy*, 161 F.3d at
27 1230.

28 In removing any lingering doubt about the admissibility of reliable expert

1 testimony the Ninth Circuit made it clear that: “[T]he interests of justice favor
2 leaving difficult issues in the hands of the jury and relying on the safeguards of the
3 adversary system . . . to ‘attack[] shaky but admissible evidence.’” *Wendell*, 858
4 F.3d at 1237 (quoting *Daubert*, 509 U.S. at 596) (alteration in original). The
5 Supreme Court has not directed courts to follow a different rule since it first
6 decided *Daubert* almost 28 years ago.” *Hardeman, supra*, at 962.

7 That one side disagrees with the opinion of the other sides’ expert is not a
8 basis for the Court to exclude them under *Daubert*. The test is whether or not the
9 reasoning is scientific and will assist the trier of fact. *Kennedy, supra*, 161 F.3d at
10 1230. The reasoning and methodology of Whittaker’s expert Mr. Hokkanen is
11 based on hard science, field data and the application of a widely accepted
12 methodology. Mr. Hokkanen’s opinions and testimony will accomplish exactly
13 what *Daubert* counsels, it will assist the Court and the jury in determining the
14 central issues in this case.

15 **III. ARGUMENT**

16 SCVWA incorrectly seeks to exclude Mr. Hokkanen’s Opinions 4, 5 and 9
17 under *Daubert* and Federal Rules of Evidence, Rule 702 by claiming these
18 opinions employ flawed methodology and are not the product of reliable principles
19 and methods. This argument crumbles when the basis for each of these opinions
20 are examined:

- 21 • Hokkanen Opinion 4 is based on the provable scientific facts that
22 perchlorate migrates at the same rate as groundwater, PCE and TCE migrate
23 up to 10 times slower than groundwater, and is also based upon detection
24 levels of these VOCs at various wells at issue
- 25 • Hokkanen Opinion 5 is based on the capture zones for well V-201 and V-
26 205 developed by CH2MHill
- 27 • Hokkanen Opinion 9 is based on SCVWA’s own measurements of chloride
28 concentrations in both the effluent from its perchlorate treatment plant and
the water in Castaic Lake as compared to SCVWA’s measurement of
chloride concentrations at its water delivery turnouts.

1.

1 **A. THE COURT PREVIOUSLY RULED THAT THE MR. HOKKANEN'S**
2 **OPINIONS MEET THE STANDARD FOR THEIR ADMISSIBILITY.**

3 In its April 5, 2021 Order Regarding Parties Motions and Cross Motions for
4 Partial Summary Judgement Dkt. 272 (pp. 4-6), this Court found that Mr.
5 Hokkanen's Opinions were reliable and credible. In so ruling the Court addressed,
6 and rejected, the very issues SCVWA argues in its motion in limine to exclude Mr.
7 Hokkanen's Opinions. Based upon this alone Mr. Hokkanen's Opinions meet the
8 standards under *Daubert* and Fed. R. Evid. 702.

9 The Court, based on Mr. Hokkanen's opinion found that there was a genuine
10 issue of fact as to causation that precludes summary judgement in favor of
11 Plaintiff. Seeking to avoid this result, Plaintiff discusses at length the various
12 problems it perceived with this expert's opinion, calling it "conclusory" and
13 incapable of creating a genuine dispute. SCVWA MSJ Reply Brief ("SCVWA
14 Reply"). As in the present Motion, Plaintiff argued that Defendant's expert failed
15 to account for other possible pathways or the impact of Plaintiff's wells on the
16 flow paths and flow rates. *Id.* at 9-13.

17 In rejecting the argument, the Court stated:

18 To be sure, courts may grant "summary judgment against a party who
19 relies solely on an expert's opinion that has no more basis in or out of the
20 record than . . . theoretical speculations." *United States v. Various Slot*
21 *Machines on Guam*, 658F.2d 697, 700 (9th Cir. 1981) (citation omitted). But
22 the Court cannot conclude at this point that Defendant's expert, who
23 provided extensive data and analysis in support of his conclusions, holds an
24 opinion based on pure speculation. *See id.* (noting summary judgment was
25 properly reversed when "the expert stated facts to back up his conclusion").
26 While Plaintiff's "numerous criticisms" of the expert's opinion "are not to
27 be taken lightly," the "weight to be given" to that opinion "is an issue best
28 left to the jurors to decide in trial." *Jones v. Nat'l Distillers & Chem. Corp.*,
 484 F. Supp. 679, 683 (S.D.N.Y. 1979). (Footnotes omitted)."

MSJ Order at 5.

1 **B. THE OPINION REGARDING TRAVEL TIME RATES MEETS THE**
2 **STANDARDS FOR ADMISSIBILITY.**

3 Mr. Hokkanen's evaluation of the migration of TCE was based in part on
4 groundwater data collected and analyzed by SCVWA's consultant CH2M Hill, and
5 compared to perchlorate groundwater data also collected by CH2M Hill. The data
6 was compared and plotted to show the relative extent of migration for both TCE
7 and perchlorate. The resulting analysis shows that "TCE has not migrated to the
8 western boundary [of the Whittaker property] and beyond to the [SCVWA]
9 production wells." Declaration of Gary Hokkanen ("Hokkanen Dcl."), attached as
10 Exhibit 1 to Declaration of Fred M. Blum ("Blum Decl."), filed and served
11 herewith, at ¶¶6-12.

12 As would be expected the comparison of the plumes shows the perchlorate
13 plume has migrated 2 to 2.5 further than TCE, which CH2M Hill reported
14 migrates up to 10 times slower than groundwater and in turn perchlorate.
15 Hokkanen Dcl. para. 11-13.

16 The "distance traveled by TCE from the Whittaker site based on the distance
17 traveled by perchlorate from the Whittaker site" was not calculated in my Expert
18 Report. This calculation was not performed for two reasons. First, the TCE data, as
19 shown in Figures 1 and 2, make this calculation unnecessary. The groundwater
20 quality data shows TCE has not migrated as far as the western boundary of the
21 Bermite Site or Saugus 1 and 2. Using TCE data from groundwater monitoring
22 wells shows how far TCE has migrated from the Bermite Site.

23 SCVWA ignores this and instead, despite the lack of site-specific data, such
24 as organic carbon content to determine a site-specific retardation factor, tries to
25 calculate the distance using non-site-specific data, which is not representative of
26 the actual TCE travel distance. Hokkanen Dcl. ¶14. Instead of using actual
27 groundwater quality data collected in the field SCVWA calculated the hypothetical
28 length of the TCE plume from the Hula Bowl to be 6,200 feet. As discussed above,

1 the groundwater quality data does not support this calculation.

2 Groundwater production well V-201 is approximately 9,400 feet
3 downgradient from the Hula Bowl and V-205 is approximately 11,200 feet
4 downgradient from the Hula Bowl. Both wells are further from the Hula Bowl than
5 the SCVWA's hypothetical TCE plume distance. SCVWA's calculation also does
6 not account for the travel time from a surface release through the area above the
7 groundwater (called the vadose or unsaturated zone) to the groundwater. TCE also
8 moves slower than perchlorate in this zone.

9 Not surprisingly, SCVWA's experts disagree with Mr. Hokkanen's opinion.
10 SCVWA ignored the field data collected from the wells and used a hypothetical
11 calculation to reach a conclusion. Mr. Hokkanen relied upon data to reach his
12 conclusion. SCVWA does not provide any basis for concluding that travel time
13 analysis is an essential part of a causation analysis when extensive groundwater
14 data is considered. That SCVWA disagrees with Mr. Hokkanen's methods and
15 conclusions is not a basis to exclude Mr. Hokkanen's opinion. *Kennedy*, 161 F.3d
16 at 1230.

17 **C. THE OPINION REGARDING MIGRATION PATHWAYS RATES MEETS**
18 **THE STANDARDS FOR ADMISSIBILITY.**

19 In forming his opinion with regard to the migration pathway for VOCs, Mr.
20 Hokkanen examined and analyzed "water level and groundwater quality data
21 collected from and in the vicinity of the [Whittaker property]. Hokkanen Decl. ¶18.
22 SCVWA provides not basis for concluding that this is an improper methodology.
23 SCVWA proved no expert declaration. No reference to a treatise. And no
24 reference to a regulatory guidance document. All it relies on is statements from its
25 attorneys.

26 Mr. Hokkanen's review of the data shows the migration pathways for VOCs
27 and perchlorate, as shown in Figures 1 and 2. *Id.* at ¶¶8, 11 and 12. SCVWA
28 claims that VOCs did not migrate through the western boundary as perchlorate did,

1 but, instead, decided to take a different route either north or south of the western
2 boundary. The water quality data does not support this hypothesis. *Id.* at ¶¶ 19-20.
3 Mr. Hokkanen, contrary to SCVWA's contentions, did not rely upon just three
4 wells. As set forth in detail in his expert report he considered all of the available
5 data. *Id.* at ¶¶ 21-25.

6 SCVWA's hypothesis is that VOCs and perchlorate migrated along
7 alternative pathways with VOCs going their own way. This theory runs directly
8 contrary to the Report of its own expert - Dr. Mark Trudell. Dr. Trudell stated that
9 VOCs and perchlorate "are migrating on exactly the same groundwater flow path."
10 Report of Mark Trudell, at 16 (Ex. 2 to Blum Decl.). That SCVWA now disagrees
11 with Mr. Hokkanen's opinion on groundwater migration pathways does not mean
12 that Mr. Hokkanen ignored the possibility of "alternatives." On the contrary, Mr.
13 Hokkanen considered water quality data collected from the wells in the area, and
14 this data led him to conclude the pathways for perchlorate and VOCs would be the
15 same.

16 Once again, the fact that that SCVWA's position is in disagreement with Mr.
17 Hokkanen's data-based analysis and conclusion is not a basis to exclude Mr.
18 Hokkanen's opinion. *Kennedy, supra*, 161 F.3d at 1230.

19 **D. The Opinion Regarding V-201 And V-205 Meets The Standards**
20 **For Admissibility.**

21 In his Expert Report Mr. Hokkanen discusses in detail the groundwater
22 monitoring well data in the vicinity of V-201 and V-205 that support the presence
23 of other potential unidentified sources of VOCs. He also examined the results of
24 groundwater flow modeling by CH2M Hill, a Water Agency consultant, to
25 determine that capture zones for V-201 and V-205 did not encompass the
26 [Whittaker property]. Hokkanen Decl. ¶¶29-30. Furthermore, in rebutting
27 SCVWA's expert Mark Trudell he examined water quality data from V-201 and
28 V-205 and concluded that VOCs detected in these wells could not have migrated

1 from the [Whittaker property]. *Id.* at ¶ 31.

2 In reaching this opinion Mr. Hokkanen, evaluated groundwater quality data
3 obtained from the California State Water Resources Control Board GAMA
4 Groundwater Information System. This data showed that TCE was first detected in
5 V-201 in 2017 and in 2012 in V-205. Perchlorate was first detected in V-201 in
6 2010 and first detected in V-205 in 2015. Due to retardation, if both perchlorate
7 and TCE were migrating to V-201 and V-205 from the Bermite Site, TCE should
8 take at least twice as long to arrive at these wells as perchlorate. Instead, TCE was
9 detected in V-205 before perchlorate was detected. And TCE was detected in V-
10 205 before being detected in V-201, although V-205 is located downgradient and
11 further away from the [Whittaker property]. *Id.* at ¶33.

12 Further support for this opinion comes from SCVWA's Dr. Trudell. He
13 testified that he could not conclude that VOC detections in V-201 and V-205 were
14 from the Bermite Site. He testified that the VOC detections were likely from a
15 source other than the [Whittaker property]. *Id.* at ¶ 35.

16 There is no basis to exclude Mr. Hokkanen's opinion just because SCVWA
17 disagrees with the opinion. This is especially so when SCVWA's expert Mark
18 Trudell concluded that the VOC's in SCVWA's wells could not have emigrated
19 from the Whittaker property.

20 **E. The Opinion Regarding Flamingo Cleaners Meets The Standards**
21 **For Admissibility.**

22 In reaching this opinion Mr. Hokkanen cited a Castaic Lake Water Agency
23 report and testimony by Mr. Leserman, Senior Engineer with the Santa Clarita
24 Valley Water Agency regarding the detection of VOC Castaic Lake s in the water
25 distribution system. *Id.* at ¶36. The Castaic Lake report stated that "CLWA is
26 confident that Saugus 1 and 2 wells are not the source of the recent episodes of
27 high PCE detection." *Id.* at ¶37. Mr. Leserman, Senior Engineer with the Santa
28 Clarita Valley Water Agency, testified that the PCE detections at SC-1 had nothing

1 to do with the Whittaker property. *Id.* at ¶38. Flamingo Cleaners was identified as
2 the most likely source. Investigation into Elevated Tetrachloroethylene (PCE)
3 levels at CLWA SC-1 Turnout March 21, 2013, at 4 (Ex. 3 to Blum Decl.).

4 PCE concentrations at the SC-1 turnout (the piping that delivers water to
5 residents) was 14 times higher than the concentrations measured in the effluent
6 from the Perchlorate Treatment Plant that treated water pumped from Saugus-1 and
7 Saugus-2 leading to the logical conclusion that groundwater was not the source of
8 the VOC contamination. A conclusion reached by SCVWA on several occasions.
9 Hokkanen Decl. at ¶ 38.

10 **IV. CONCLUSION**

11 There is no basis upon which to exclude Mr. Hokkanen's Opinions. A mere
12 disagreement among experts is not sufficient to do so. *Kennedy v. Collagen Corp.*,
13 161 F.3d 1226, 1230 (9th Cir. 1998), *cert. den.* 526 U.S. 1099. And this Court has
14 previously ruled that Mr. Hokkanen's Opinions are reliable and credible, and
15 therefore admissible.

REPLY IN SUPPORT OF PLAINTIFF'S MIL # 4 - G. HOKKANEN

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1 **I. INTRODUCTION**

2 As a preliminary matter, much of Whittaker's opposition relies on the
3 Declaration of Gary Hokkanen that is attached to the Blum declaration. The
4 language cited in Whittaker's opposition does not match the declaration and/or is
5 not contained in the Hokkanen declaration. All arguments based on the Hokkanen
6 declaration lack foundation and should be stricken from Whittaker's opposition.

7 **II. MR. HOKKANEN'S OPINION 4 OMITTS A SIMPLE BUT CRITICAL**
8 **CALCULATION – THE DISTANCE TCE MOVES FROM THE**
9 **WHITTAKER SITE – AND FAILS TO CONSIDER**
10 **GROUNDWATER FLOW DIRECTION**

11 **A. Hokkanen's Opinions 1-4 allowed Mr. Hokkanen to calculate**
12 **TCE travel distance, but he declined to do so**

13 Whittaker argues that SCV Water seeks to exclude Mr. Hokkanen's
14 testimony because its experts disagree with Mr. Hokkanen. Whittaker is wrong.
15 Both SCV Water experts and Mr. Hokkanen agree that:

- 16 • Perchlorate and VOCs were generally released from the same source
17 areas on the Whittaker site. Gee Decl. ISO Replies, Ex. B at Op. 1
18 (Hokkanen Expert Report).
- 19 • Perchlorate and VOCs released from the source areas followed the
20 same migration pathway in the unsaturated zone and in groundwater.
21 Gee Decl. ISO Replies, Ex. B at Op. 2 (Hokkanen Expert Report).
- 22 • Due to the different migration rates of perchlorate and VOCs, releases
23 of perchlorate from the source areas have migrated faster and further
24 than VOCs. See Gee Decl. ISO Mtns., Ex. EE at Op. 3 (Hokkanen
25 Expert Report).
- 26 • While Mr. Hokkanen and Dr. Trudell utilize different methodologies
27 to determine the relative rate of TCE and perchlorate travel through
28 groundwater, both agree that the perchlorate moves 2 to 2.5 times the
rate of TCE. (Gee Decl. ISO Replies, Ex. B at Op. 4 (Hokkanen
Expert Report) and Gee Decl. ISO Mtns., Ex. H at 2 (Trudell Rebuttal

Expert Report). (Whittaker counsel, of course, uses the relative rates of perchlorate and “PCE” (and not “TCE”) in its opposition to conflate the calculation.)

It is also uncontested that the perchlorate plume has extended at least 14,000 feet from the Whittaker site. However, Mr. Hokkanen inexplicably renders a travel distance opinion without conducting an elementary travel distance calculation for TCE to determine the distance TCE travels from the site. Opinion 4 states that “Although perchlorate has impacted . . . groundwater production wells [14,000 feet] downgradient of the Bermite site, VOCs from the Bermite site have not migrated [7,000 feet³ using Mr. Hokkanen’s opinion that perchlorate moves twice the rate of VOCs] has not impacted SCV Water wells [that are located less than 7,000 feet away].” Whittaker contends, without supporting evidence, that Mr. Hokkanen omitted the calculation because of infrequent TCE detections in the three wells along the western border of Whittaker site. However, as demonstrated in the ASVAB for Dummies exemplar, the travel distance for TCE is based only on travel rates for TCE and perchlorate and known perchlorate travel distance – contamination sample results are not a factor in the distance travel calculation. Thus, even if Whittaker’s unsupported assertion regarding Mr. Hokkanen’s omission of the travel distance is true, contamination data is not a factor in the VOC travel calculation of $\frac{1}{2}$ of 14,000 feet equals 7,000 feet.

Mr. Hokkanen’s fourth opinion should be excluded, not because of any disagreement among the experts, but because Mr. Hokkanen omitted the distance

³ For simplicity, the 7000 feet calculation is based on perchlorate traveling twice as far as TCE. Since Mr. Hokkanen provided a range of perchlorate traveling 2-2.5 times faster TCE, the TCE travel distance is between 5,600 feet and 7,000 feet. See exemplar distance problem from *ASVAB/AFQT for Dummies*, 2nd Edition (“ASVAB for Dummies”), at <https://www.dummies.com/test-prep/asvab-test/how-to-solve-travel-problems-on-the-asvab/>. “If two trains are traveling in the same direction as each other but at different rates of speed, one train travels farther in the same time than the other travels. The distance between the two trains is the difference between the distance traveled by train A and the distance traveled by train B.”

1 travel calculation from his opinion.

2 **B. Mr. Hokkanen's Premise that groundwater leaving the Whittaker**
3 **site must flow through the Hokkanen Maginot Wall is**
4 **contradicted by Mr. Hokkanen himself**

5 As stated in the underlying motion, Mr. Hokkanen failed to consider years of
6 groundwater flow data provided by AECOM to opine that groundwater flow must
7 go through the Hokkanen Maginot Wall to reach Saugus 1 and 2. Upon review of
8 the evidence provided in Blum Declaration in support of Whittaker's opposition to
9 SCV Water's motion to exclude Mr. Hokkanen's opinion 4, Whittaker provided
10 evidence that Mr. Hokkanen himself contradicted his Maginot Wall assertion. On
11 PDF page 60 of Mr. Blum's declaration (page 14 of the Hokkanen expert report),
12 Mr. Hokkanen states that "Figure 15 shows the groundwater flow direction in the
13 HSU S-IIIa (one of the largest HSUs) is west to northwest. Figure 15 of his report
14 shows groundwater flow around the Hokkanen Maginot wall towards SCV Water's
15 wells. See Gee Decl. ISO Replies, Ex. B, Figure 15 (Hokkanen Expert Report).

16 **III. WHITTAKER DOES NOT ADDRESS SCV WATER'S REASONS**
17 **FOR EXCLUDING HOKKANEN OPINION 5.**

18 Whittaker did not and cannot dispute SCV Water's motion to exclude Mr.
19 Hokkanen's Opinion 5. Mr. Hokkanen's opinion is based on an outdated 2004
20 CH2MHill Area of Influence diagram that includes the influence of Saugus 1 and 2
21 on the Area of Influence for well V-201. Mr. Hokkanen completely fails to
22 consider that Saugus 1 and 2 did not operate between 1997 and 2011 and that the
23 two wells would not have intercepted groundwater contamination during the time
24 that they did not operate. Mr. Hokkanen is obligated to be as careful in analyzing
25 information as an expert as he would be in his normal consulting activities, and a
26 glaring omission of 14 years of non-operation (since the construction of the wells
27 32 years ago) suggest that he was not being careful. In response to Whittaker's
28 assertion that his opinion is based on groundwater flow calculations—calculations
that he did not include in Opinion 4—Mr. Hokkanen did not consider that Saugus 1

1 and 2 would have drawn groundwater from the Whittaker site during its operation
2 between 1989 and 1997, and then would have slowed down to its natural flow rate
3 from 1997 to 2011. Again, Mr. Hokkanen was not being as careful with his expert
4 analysis as a hydrogeologist would be in his normal consulting activities because
5 he did not consider 14 years of non-operation.

6 **IV. WHITTAKER'S OPPOSITION DOES NOT ADDRESS SCV**
7 **WATER'S MOTION TO EXCLUDE OPINION 9 AND THUS IT**
8 **SHOULD BE EXCLUDED**

9 SCV Water seeks to exclude Mr. Hokkanen's opinion because it simply
10 regurgitates the findings of a percipient witness report for which the witness
11 himself was uncertain as to whether Flamingo Cleaners was a source of PCE
12 contamination in the distribution system. Mr. Hokkanen admitted that he read the
13 short report once sometime prior to his deposition and did no further analysis on
14 the information contained in the report. *See Baker v. Firstcom Music*, No.
15 A16CV08931VAPJPRX, 2018 WL 2676636, at *2 (C.D. Cal. May 8, 2018)
16 ("First, experts are expected to verify the reliability of the data underlying their
17 conclusions independently instead of simply adopting the representations of an
18 interested party."); *Cholakyan v. Mercedes-Benz USA, LLC*, 281 F.R.D. 534 (C.D.
19 Cal. 2012) ("An expert can appropriately rely on the opinions of others if other
20 evidence supports his opinion and the record demonstrates that the expert
21 conducted an independent evaluation of that evidence"). Mr. Hokkanen's opinion
22 number 9 should be excluded because he simply read the report and incorporated
23 the conclusions of the report without verifying the reliability of the report or
24 independently evaluating the analysis and credibility of the report. He only
25 determined that the underlying report was flawed during his deposition, when he
26 was asked about low pressure contaminants flowing into a high pressure
27 distribution system.

28 **V. CONCLUSION**

For the foregoing reasons, Mr. Hokkanen's opinions 4, 5, and 9 should be

1 excluded.

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3 Date: July 23, 2021

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